87-265

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

WALTER LEE KIMBERLIN, Appellant,

v.

STATE OF OKLAHOMA, Appellee,

APPEAL
FROM THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JURISDICTIONAL STATEMENT

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State of Oklahoma
112 State Capitol
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QUESTIONS PRESENTED

1. Whether the issuance of an unverified Uniform Violations Complaint, to institute a criminal charge, is sufficient to invoke the trial court's subject matter jurisdiction and whether such issuance constitutes a violation of Art. 2, Sec. 17 of the Oklahoma Constitution and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

2. Whether the district court's denial of appellant's "Counsel of Choice", he being a non-lawyer, constituted a violation of the Sixth Amendment to the Constitution of the United States via the Due Process Clause of the Constitution of the United States, thus preventing him from having the benefit of a fair trial.

3. Whether the State of Oklahoma and its legislature has substantially and prejudicially failed to so declare what

Thing shall be that mandated legal tender, as prescribed by Art. I, Sec. 10, Cl. 1 of the Constitution of the United States, and thus precluding the jurisdiction of the Tulsa County District Court to enforce this judgment or any other judgment for money.

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NO._____

IN THE
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October Term, 1986

WALTER LEE KIMBERLIN, Appellant,

v.

STATE OF OKLAHOMA, Appellee,

APPEAL
FROM THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

JURISDICTIONAL STATEMENT

Walter Lee Kimberlin, the appellant, appeals from the final judgment of the Court of Criminal Appeals of the State of Oklahoma, dated April 21, 1987, affirming the convictions of Case Nos. TR-84-13240 and TR-84-13241 for Speeding in violation of 47 O.S.1981, Sec. 11-801(a), and

Operation of a Motor Vehicle While License Suspended in violation of 47 O.S.1981, Sec. 6-303(b), respectively.

OPINION BELOW

The opinion of the Court of Criminal Appeals of the State of Oklahoma, which appears in the appendix hereto, p. 1a, infra, is reported at 736 P.2d 530 (Okl.Cr.1987).

JURISDICTION

The judgment of the Court of Criminal Appeals of the State of Oklahoma, affirming the convictions of the appellant, was entered on April 21, 1987. See p. 1a, infra.

The appellant mailed his Notice of Appeal to the Court of Criminal Appeals on July 17, 1987. It was received by the

Court on July 20, 1987. See p. 12a, infra.

This appeal is being docketed in this Court within 90 days from the entry of judgment below. The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1257(2).

CONSTITUTIONAL PROVISIONS AND RULES

Sixth Amendment,
United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence.

Fourteenth Amendment,
United States Constitution:

...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Article 2, Section 7,
Oklahoma Constitution:

No person shall be deprived of life, liberty, or property, without due process of law.

Article 2, Section 17,
Oklahoma Constitution:

No person shall be prosecuted criminally in courts of record for felony or misdemeanor otherwise than by presentment or indictment or by information...

RAISING THE FEDERAL QUESTIONS

At the earliest stage of the criminal proceedings below, the appellant, in want of counsel, raised the jurisdictional claim, in a NOTICE OF SPECIAL CONTINUING APPEARANCE, by objection "to the jurisdiction and/or authority of [the trial court] over the subject matter and/or [his] person," and he refused to enter a plea. He further demanded his right to enjoy a trial by jury of twelve impaneled to decide the law, facts and the admissability of evidence as constituted by Common Law, and the right to counsel of his choice, citing the Sixth and Fourteenth Amendments to the Constitution of the United States and the

Constitution and Law of the State of Oklahoma not inconsistent with certain organic documents from the Magna Charta. The appellant followed with a DEMURRER TO COMPLAINT, further challenging the jurisdiction of the Court in the case, and with a NOTICE AND DEMAND FOR DISMISSAL FOR LACK OF JURISDICTION, stating that "[t]he Complaint fails in the most crucial of issues because it fails to show a triable issue At Law under the governmental restrictions of the Constitution of the United States..." The appellant, in his NOTICE AND DEMAND FOR RIGHTS "SUA SPONTE", further reminded the trial court of his continued challenge of "the jurisdiction of the Court over the subject matter and of the Court's capability to effect a remedy in this case."

As to his claim pertaining to his right to have the Assistance of Counsel of Choice, the appellant filed his NOTICE AND

DEMAND FOR COUNSEL OF CHOICE with two Briefs in support of said motion during the pretrial stage of the proceedings. His third claim, pertaining to Article I, Sec. 10 lawful money, was first raised in the Court of Criminal Appeals in the appellant's BRIEF OF APPELLANT. It should be noted here that the Appeal was docketed without tendering any fees therefore. In the Appellant's brief, the issue of payment of the fines in anything but gold and silver coin was throughly discussed.

The appellant's specific jurisdictional claim pertaining to the defective process in instituting these criminal charges was never squarely addressed below, aside from the fact that he continually asserted the court's lack of subject matter jurisdiction over the case. Therefore, the particulars of this issue are being addressed for the first time in this Court. The Counsel of Choice issue was reiterated

by appellant before the Court of Criminal Appeals of the State of Oklahoma.

The opinion of the Court of Criminal Appeals of the State of Oklahoma characterized all of the appellant's assignments of error as "patently frivolous constitutional issues which are not supported by relevant argument or authority" and declined to consider his "alleged contentions." The convictions were affirmed by the court.

STATEMENT OF THE CASE

The appellant was stopped by an Oklahoma Highway Patrolman on November 18, 1984, who issued two citations for the crimes of Speeding (67 mph in a 55 mph zone), in violation of 47 O.S.1981, Sec. 11-801(a), and Operation of a Motor Vehicle While License Suspended, in violation of 47 O.S.1981, Sec. 6-303(b). Two unverified

complaints (the original tickets) were filed in the District Court of Tulsa County on November 20, 1984, case numbers TR-84-13240 and TR-84-13241. On January 15, 1985, appellant appeared by Special Appearance for arraignment and denied the court had jurisdiction over his person and thereto related subject matter. The appellant refused to enter a plea. A plea of not guilty was entered on behalf of the appellant by the court. A motion hearing was set for May 15, 1985.

Among the issues raised by motion by the appellant were NOTICE OF SPECIAL CONTINUING APPEARANCE, NOTICE OF SPECIAL OBJECTIONS, DEMURRER TO COMPLAINT, and NOTICE AND DEMAND FOR DISMISSAL FOR LACK OF JURISDICTION, each seeking dismissal of the charges due to lack of jurisdiction over the person and subject matter of the case. From the appellant's first appearance before the court, he requested the court to

allow the appellant to have the assistance of the counsel of his choice, even if that person happened to not be a licensed attorney. This was later formalized by his NOTICE AND DEMAND FOR COUNSEL OF CHOICE filed with the court. There were other issues raised which are not the subject of this appeal. All of appellant's motions, although unopposed by any filings of the prosecution, were overruled at a Motion Hearing on May 15, 1985. On June 5, 1985, the matter was called for trial. A jury trial was held on June 5 and 6, 1985. The jury returned a guilty verdict and assessed a fine of $200.00 for each offense plus costs. On June 11, 1985, sentence was imposed. The appellant gave oral notice of intent to appeal and subseqently filed the necessary documents and motions to perfect his appeal. The appellant is currently free on appeal bond.

On October 8, 1985, the appellant's

appeal was received and docketed with the Court of Criminal Appeals of the State of Oklahoma. His appeal was docketed without cost based upon a DEMAND FOR RELIEF FROM FILING FEES and AFFIDAVIT OF POVERTY filed with the Court of Criminal Appeals. His demand and affidavit were based upon grounds that the Oklahoma Constitution affords jusitice without sale and that Article I, Section 1Ø of the Constitution of the United States precludes the state from making anything but gold or silver coin a tender in payment of debts.

Appellant's Petition in Error contained seven assignments of error. On April 21, 1987, the Criminal Court of Appeals affirmed the judgment and sentence.

THE QUESTIONS ARE SUBSTANTIAL

The jurisdictional question presented herein is substantial. The Oklahoma

Constitution, Article 2, Section 17, requires that no person shall be prosecuted criminally in courts of record for felony or misdemeanor otherwise than by presentment or indictment or by information.

Although, the appellant is bringing forth this particular issue for the first time in this appeal, the record is clear that he has continually, during every stage of these proceedings asserted and objected to the fact that the trial court had not properly obtained jurisdiction in this case. Nonetheless, it has been repeatedly held that jurisdiction can be challenged at any time. It has been held that jurisdictional issues can always be considered, even sua sponte, whether or not raised below. United States v. Storer Broadcasting Co., 351 U.S. 193, 197; Guiterrez v. Waterman, 373 U.S. 206, 209; Federal Communications Commission v.

National Broadcasting Co., 319 U.S. 239, 246; Rochester Telephone Corp. v. United States, 307 U.S. 125, 128, n. 3; A.F.L. v. Labor Board, 308 U.S. 401, 403. See also Glidden Co. v. Zdanok, 370 U.S. 530, 535-537.

In the instant case, the appellant was charged and prosecuted under an unverified complaint, entitled "Uniform Violations Complaint", issued by an officer of the Oklahoma Highway Patrol, not conforming to the requirements as embodied in the Oklahoma Constitution. Further, the failure to comply with the requirements of an information, constitutes a violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

To prosecute an accused under a defective process which does not conform to the due process requirements established under the constitution of the state is as

if he were tried upon charges which were never brought. It is as much denial of due process to send an accused to prison following conviction for charge that was never made as it is to convict him upon charge for which there is no evidence to support that conviction. Gregory v. Chicago, 394 U.S. 111, 22 L.Ed.2d 134, 89 S.Ct. 946 (1969). Similarly, it is as much violation of due process to send accused to prison following conviction of charge on which he was never tried as it would be to convict upon a charge that was never made. Rabe v. Washington, 405 U.S. 313, 31 L.Ed.2d 258, 92 s.Ct. 993, reh. den. 406 U.S. 911, 31 L.Ed.2d 822, 92 S.Ct. 1604 (1972). The Due Process Clause of the Fourteenth Amendment requires that the process and the form of bringing forth an accusation is as essential as the requirement that there be sufficient evidence to support a conviction or the

requirement that there must be a trial of the issues. If either are lacking, then a conviction cannot stand.

Article 2, Section 17 of the Oklahoma Constitution is effective, and as supplemented by the common law in force and by statute supplies a sufficient rule by which the right given under such section may be enforced. Ex parte McNaught, 23 Okl. 285, 1 Okl.Cr. 260, 100 P. 27 (1909); In re McNaught, 1 Okl.Cr. 528, 99 P. 241 (1909); Grimes v. State, 65 Okl.Cr. 99, 83 P.2d 410 (1938). County courts are courts of record within this section in which criminal prosecution must be by presentment or indictment or information. Under this section, criminal prosecutions in courts of record must be by indictment or information. George v. State, 28 Okl.Cr. 388, 231 P. 318 (1925); Berg v. State, 28 Okl.Cr. 281, 230 P. 296 (1924); Boswell v. State, 19 Okl.Cr.R. 443, 200 P. 256 (1921).

Under this section the county court has no jurisdiction as a court of record to place a defendant on trial on a verified complaint only. Gibson v. State, 26 Okl.Cr. 246, 223 P. 406 (1924); Morgan v. State, 15 Okl.Cr. 158, 175 P. 625 (1918). Under this section, county court may not try defendant on verified complaint only, indictment or information being necessary. Hickey v. State, 36 Okl.Cr. 137, 252 P. 858 (1927).

Virtually, all traffic violations prosecuted in Oklahoma's courts of record are currently instituted using the Uniform Violations Complaint as the essential document to proceed with prosecutions of violations of the Motor Vehicle Code. As well, many other violations of city ordinances, in addition to traffic related crimes, are prosecuted under this form of process. It may be argued that the current system, even though unconstitutional, is

more efficient and convenient to law enforcement than following the strict requirements of filing formal informations to prosecute the petty criminal acts arising from traffic violations and other minor misdemeanors. However, the framers of the constitution did not seek efficiency nor convenience. The state legislature has seen fit to criminalize traffic violations and therefore the constitutional provisions prescribing the methods of bringing charges should be followed.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully Submitted,

/s/ Walter Lee Kimberlin
WALTER LEE KIMBERLIN, pro se
8801 New Sapulpa Road
Tulsa, OK 74131
(918) 224-7755

By order of the Clerk of the Supreme Court of the United States, dated July 30, 1987, this Jurisdictional Statement, originally filed with the Court on July 20, 1987, is resubmitted to conform to the Court's Rules of Procedure.

Resubmitted on this _____ day of August, 1987.

_____

WALTER LEE KIMBERLIN

APPENDICES

APPENDIX "A"

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

WALTER LEE KIMBERLIN, APPELLANT,

-vs- No. M-85-636

STATE OF OKLAHOMA, APPELLEE.

OPINION

BUSSEY, Judge:

The appellant, Walter Lee Kimberlin, was convicted of the crimes of speeding and Driving Under Suspension in the District Court of Tulsa County in Case Nos. TR-84-13240 and TR-84-13241 and was fined four hundred dollars ($400), and he appeals.

This Court is unaware of what transpired at appellant's trial due to the fact that appellant failed to make trial transcripts a part of the record in this case as required by 22 O.S.1981, ch. 18 App., Rule 3.2. Apparantly, however, appellant was convicted of exceeding the fifty-five (55) mile per hour speed limit,

and operating a motor vehicle while his license was suspended.

Appellant raises seven assignments of error on appeal; however, we observe that he does not deny the charges brought against him and offers no legitimate defense. He simply raises patently frivolous constitutional issues which are not supported by relevant argument or authority; therefore, we will not consider these alleged contentions. Sisson v. State, 714 P.2d 1043 (Okl.Cr.1986).

Accordingly, the judgment and sentence is AFFIRMED.

AN APPEAL FROM THE DISTRICT COURT
OF TULSA COUNTY, OKLAHOMA
THE HONORABLE EDWARD HICKS, JUDGE

WALTER LEE KIMBERLIN, appellant, was convicted of the crimes of Speeding and Operation of a Motor Vehicle While License Suspended in the District Court of Tulsa, County in Case Nos. TR-84-13240 and TR-84-13241 and was fined four hundred dollars ($400), and he appeals. **AFFIRMED.**

WALTER L. KIMBERLIN

TULSA, OKLAHOMA
PRO SE

MICHAEL C. TURPEN
ATTORNEY GENERAL
TERRY J. JENKS
ASSISTANT ATTORNEY GENERAL
STATE OF OKLAHOMA
OKLAHOMA CITY, OKLAHOMA
Attorneys for Appellee

OPINION BY BUSSEY, J.
BRETT, P.J., CONCURS
PARKS, J., CONCURS

AUTHORIZED FOR FILING
COURT OF CRIMINAL APPEALS
APRIL 21, 1987

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA
APRIL 21, 1987
JAMES W. PATTERSON
CLERK

FOR PUBLICATION

IN THE DISTRICT COURT
OF TULSA COUNTY, OKLAHOMA

THE STATE OF OKLAHOMA, Plaintiff,

vs. No. TR-84-13241

WALTER LEE KIMBERLIN, Defendant.

JUDGMENT AND SENTENCE ON ____ CONVICTION ____. The prisoner, ____ WALTER LEE KIMBERLIN ____ being personally present in open court ____ ____ and arraigned, and having plead not guilty to the crime of ____ SPEEDING ____ charged in said ____ Information ____, and having been then and there in said court duly and legally tried and convicted of said crime, and upon being asked by the Court whether he had any legal cause to show why judgment and sentence should not be pronounced against him at this time, and having no good reasons why it should not be pronounced against him, and none appearing to the Court, the Court does now hereby

adjudge and sentence the said _____ Defendant _____ to be imprisoned in the county jail of Tulsa County for the period of _____ ---------- _____ and that he pay to the State of Oklahoma a fine of _ $200.00/COST _____, as punishment for said offense.

IT IS THEREFORE HEREBY CONSIDERED AND ADJUDGED BY THE COURT that the said _____ WALTER LEE KIMBERLIN Defendant _____ be committed to be imprisoned in the county jail at Tulsa, in the State of Oklahoma, and confined in said jail for the term of _____ ---------- _____ and that he pay to the State of Oklahoma a fine of $__ 200.00/COST ___ for said offense of _ _____ SPEEDING _____ said term of sentence to begin at and from this date, and that said defendant pay the costs of this prosecution, taxed at $ 200.00/COST ___, for which judgment is hereby rendered against the said defendant; and thereupon

the Court notified the defendant of his right of appeal.

IT IS FURTHER ORDERED AND ADJUDGED BY THE COURT that the Sheriff of Tulsa County receive said Defendant and confine him in the jail of Tulsa County according to this judgment, sentence and order; and that if he fail to pay said fine and costs, then for an additional term of one day for each one dollar of the fine and costs aforesaid, viz: for _____ days; and that the Clerk of this Court do immediately certify, under the seal of the Court, and deliver to the Sheriff of Tulsa County two copies of this judgment, sentence and order, one copy to accompany the body of the said Defendant and to be the warrant and authority of the said Sheriff for imprisonment of the said Defendant as hereinbefore provided, the other copy to be returned to this Court with the doings of said Sheriff

endorsed thereon.

Dated this 11 day of June, 19 85.

/s/ Edward J. Hicks
District Judge

IN THE DISTRICT COURT
OF TULSA COUNTY, OKLAHOMA

THE STATE OF OKLAHOMA, Plaintiff,

vs. No. TR-84-13240

WALTER LEE KIMBERLIN, Defendant.

JUDGMENT AND SENTENCE ON CONVICTION. The prisoner, WALTER LEE KIMBERLIN being personally present in open court and arraigned, and having plead not guilty to the crime of DRIVING UNDER SUSPENSION charged in said Information, and having been then and there in said court duly and legally tried and convicted of said crime, and upon being asked by the Court whether he had any legal cause to show why judgment and sentence should not be pronounced against him at this time, and having no good reasons why it should not be pronounced against him, and none appearing to the Court, the Court does now hereby

adjudge and sentence the said _____ Defendant _____ to be imprisoned in the county jail of Tulsa County for the period of _____ ---------- _____ and that he pay to the State of Oklahoma a fine of _ $200.00/COST _____, as punishment for said offense.

IT IS THEREFORE HEREBY CONSIDERED AND ADJUDGED BY THE COURT that the said _____ WALTER LEE KIMBERLIN Defendant _____ be committed to be imprisoned in the county jail at Tulsa, in the State of Oklahoma, and confined in said jail for the term of _____ ---------- _____ and that he pay to the State of Oklahoma a fine of $__ 200.00/COST ___ for said offense of _ DRIVING UNDER SUSPENSION _____ said term of sentence to begin at and from this date, and that said defendant pay the costs of this prosecution, taxed at $ 200.00/COST ___, for which judgment is hereby rendered against the said defendant; and thereupon

the Court notified the defendant of his right of appeal.

IT IS FURTHER ORDERED AND ADJUDGED BY THE COURT that the Sheriff of Tulsa County receive said Defendant and confine him in the jail of Tulsa County according to this judgment, sentence and order; and that if he fail to pay said fine and costs, then for an additional term of one day for each one dollar of the fine and costs aforesaid, viz: for _____ days; and that the Clerk of this Court do immediately certify, under the seal of the Court, and deliver to the Sheriff of Tulsa County two copies of this judgment, sentence and order, one copy to accompany the body of the said Defendant and to be the warrant and authority of the said Sheriff for imprisonment of the said Defendant as hereinbefore provided, the other copy to be returned to this Court with the doings of said Sheriff

endorsed thereon.

/s/ Edward J. Hicks
District Judge

APPENDIX "B"

IN THE CRIMINAL COURT OF APPEALS
FOR THE STATE OF OKLAHOMA

WALTER LEE KIMBERLIN, Appellant,

v. Case No. M-85-636

STATE OF OKLAHOMA, Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Walter Lee Kimberlin, the appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Court of Criminal Appeals of the State of Oklahoma, affirming the judgment of conviction entered herein on April 21, 1987.

A copy of the opinion of the Court is attached hereto.

This appeal is taken pursuant to 28 U.S.C. Sec. 1257(2).

/s/ Walter Lee Kimberlin
WALTER LEE KIMBERLIN,
WANTING COUNSEL
8801 New Sapulpa Road
Tulsa, OK 74131

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 1987, copies of this Notice of Appeal were mailed, postage prepaid, to the Attorney General of the State of Oklahoma, Oklahoma City, Oklahoma, and to ....., District Attorney for Tulsa County, Tulsa, Oklahoma. I further certify that all parties required to be served have been served.

/s/ Walter Lee Kimberlin

I hereby certify that the original of this Notice of Appeal was received in the Office of the Clerk of the Court of Criminal Appeals on the 20th day of July, 1987.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 1987, copies of this Jurisdictional Statement were mailed, postage prepaid, to the Attorney General of the State of Oklahoma, Oklahoma City, Oklahoma, and to David Moss, Esq., District Attorney, Tulsa County, Tulsa, Oklahoma. I also further certify that all parties required to be served have been served.

/s/ Walter Lee Kimberlin
WALTER LEE KIMBERLIN

SUPPLEMENTAL CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of August, 1987, copies of the foregoing were served upon all parties as setforth above whom are required to be served.

WALTER LEE KIMBERLIN